



(Billing Code 5001-06)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 225

[Docket DARS-2016-0007]

RIN 0750-AI88

Defense Federal Acquisition Regulation Supplement: Treatment of Interagency and State and Local Purchases (DFARS Case 2016-D009)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2016 to provide that contracts executed by DoD as a result of the transfer of contracts from the General Services Administration, or for which DoD serves as an item manager for products on behalf of the General Services Administration, shall not be subject to certain domestic source restrictions, to the extent that such contracts are for the purchase of products by other Federal agencies or State or local governments.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]**, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2016-D009, using any of the following methods:

- o Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2016-D009" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2016-D009." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2016-D009" on your attached document.

- o Email: osd.dfars@mail.mil. Include DFARS Case 2016-D009 in the subject line of the message.

- o Fax: 571-372-6094.

- o Mail: Defense Acquisition Regulations System, Attn: Ms. Amy G. Williams, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after

submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, telephone 571-372-6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to amend the DFARS to implement section 897 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92). Section 897 entitled "Treatment of Interagency and State and Local Purchases" provides that contracts executed by DoD as a result of the transfer of contracts from the General Services Administration (GSA) or for which DoD serves as an item manager for products on behalf of GSA shall not be subject to the requirements under 10 U.S.C. chapter 148 (National Defense Technology and Industrial Base, Defense Investment, and Defense Conversion), to the extent that such contracts are for the purchase of products by other Federal agencies or State or local governments.

10 U.S.C. chapter 148 includes domestic source restrictions at 10 U.S.C. 2533a (Berry Amendment), 10 U.S.C. 2533b (specialty metals), and 10 U.S.C. 2534 (miscellaneous domestic source restrictions), which are implemented in DFARS subpart 225.70 as follows:

- 225.7002 (Berry Amendment).

- 225.7003 (specialty metals purchased directly by DoD or aircraft, missile or space systems, ships, tank or automotive items, weapon systems, or ammunition containing specialty metals).
- 225.7004 (buses).
- 225.7005 (certain chemical weapons antidotes).
- 225.7006 (air circuit breakers for naval vessels).
- 225.7010 (certain naval vessel components).

II. Discussion and Analysis

DoD reviewed the domestic source restrictions in 10 U.S.C. chapter 148 as implemented in DFARS subpart 225.70. DoD proposes to amend DFARS 225.7002-2, which implements 10 U.S.C. 2533a (Berry Amendment), to include an exception in a new paragraph (o) to implement section 897.

DoD does not propose to amend DFARS 225.7003, which implements 10 U.S.C. 2533b (specialty metals), because these restrictions apply to direct purchase of specialty metals by DoD or acquisition of items (e.g., aircraft or missiles containing specialty metals or components for naval vessels) that are of a military nature that GSA does not contract for and that another Federal agency or a State or local government would not be purchasing. Note that "automotive item" is defined at DFARS 225.7003 to cover military transport tactical vehicles and does

not include commercially available off-the-shelf vehicles, construction equipment, or other self-propelled equipment such as cranes or aircraft ground support.

DoD also does not propose to amend DFARS 225.7004 (buses), 225.7005 (certain chemical weapons antidotes), 225.7006 (air circuit breakers for naval vessels), or 225.7010 (certain naval vessel components), which implement 10 U.S.C. 2534. With the exception of buses, these are items for which GSA does not contract. Furthermore, 10 U.S.C. 2534(f) sets forth a principle of statutory construction, which requires a subsequent law to specifically reference 10 U.S.C. 2534 in order to modify it. Section 897 does not specifically reference 10 U.S.C. 2534, so there is not the required indication that section 897 is authorizing a modification to 10 U.S.C. 2534. Applying section 897 to 10 U.S.C. 2534, while not directly changing the language of 10 U.S.C. 2534, would change the way DoD currently applies 10 U.S.C. 2534.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This case does not add any new provisions or clauses or impact any existing provisions or clauses.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. Nevertheless, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This rule implements section 897 of the National Defense Authorization Act for Fiscal Year 2016. The objective of this rule is to eliminate the domestic source restrictions of 10 U.S.C. chapter 148 when contracts executed by DoD as a result of the transfer of contracts from the General Services

Administration (GSA) or for which DoD serves as an item manager for products on behalf of GSA, to the extent that such contracts are for the purchase of products by other Federal agencies or State or local governments.

DoD does not anticipate frequent application of this rule. The rule removes a limitation on potential sources for the specified items. In the rare instance in which the circumstances of the statute apply, it is possible that an item could be acquired from a foreign source, rather than a domestic source, which could potentially be a small business. It is not possible to estimate the number of small entities that may be affected, because it is unknown the extent to which the given circumstances may occur.

There are no projected reporting, recordkeeping, or other compliance requirements.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD has not identified any alternatives which would minimize any economic impact on small entities and still meet the requirements of the statute.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (DFARS Case 2016-D009), in correspondence.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 225

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 225 is proposed to be amended as follows:

Part 225—FOREIGN ACQUISITION

1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

2. Amend section 225.7002-2 by adding paragraph (o) to read as follows:

225.7002-2 Exceptions.

* * * * *

(o) Acquisitions that are interagency, State, or local purchases that are executed by DoD as a result of the transfer of contracts from the General Services Administration or for which DoD serves as an item manager for products on behalf of the General Services Administration. According to section 897 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92), such contracts shall not be subject to requirements under chapter 148 of title 10, United States Code (including 10 U.S.C. 2533a), to the extent such contracts are for purchases of products by other Federal agencies or State or local governments.

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